SCIENTEQUIP (M) SDN BHD

v.

PROPERTIES REVIEW SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL WAHAB SAID J
[COMPANIES (WINDING-UP) NO: D8-28-11-2004]
25 APRIL 2006

COMPANY LAW: *Winding-up - Petition - Opposition to petition - Validity of petition - Whether permissible for petition to be filed in English - Whether affidavit verifying petition valid - Whether notice pursuant to s. 218 Companies Act 1965 irregular - Whether petition ought to be granted*

This was a winding-up petition filed by the petitioner against the respondent for the amount of RM227,156.15, being rental due under a tenancy agreement. The petitioner had complied with the provisions of r. 32 of the Companies (Winding-up) Rules 1972 ('the Rules'), and a Registrar's certificate was duly issued. The respondent filed an affidavit-in-opposition, submitting that: (i) the petition was invalid as it was not filed in Bahasa Malaysia; (ii) the affidavit verifying the petition was invalid because it was not clear whether it was affirmed or given under oath; and (iii) the notice pursuant to s. 218 of the Companies Act 1965 ('the Act') was irregular as it did not give the option to the respondent to compound or secure the said amount in the notice.

Held (granting the petition to wind-up the respondent):

(1) There was, to date, no authoritative Bahasa Malaysia text of the Rules including the Forms in relation thereto. A Registrar's Circular No. 5/1990 dated 28 July 1990 permitted the use of English in winding-up proceedings. It was, thus, clearly permissible for the petition to be filed in English until such time as the authoritative Bahasa Malaysia version is gazetted. (paras 8 & 9)

(2) The deponent had affirmed the affidavit in English before a Commissioner for Oaths and that was what really mattered. The words "made oath" in the affidavit neither rendered it defective nor irregular. It would appear to be a direct

translation of the Bahasa Malaysia version of "bersumpah dan menyatakan" to English as "made oath and said", and the form in which it was administered did not invalidate the affidavit in any way. (para 12)

(3) Nowhere in the Act or in the Rules does it require a creditor who issues a s. 218 notice to give the option to a debtor to compound or secure the amount, unlike in bankruptcy notices. (para 13)

(4) The respondent had not raised any substantial issues in its affidavit-in-opposition. The debt was not disputed and nothing was said as to whether or not the respondent was solvent. The issues raised by the respondent were without basis or trivial; the respondent had not shown any reason why it should not be wound-up. (para 14)

Case(s) referred to:
*Ahmani Sdn Bhd v. Abu Karim Baharom & Ors [2000] 2 CLJ 625 HC **(refd)***

Legislation referred to:
Companies Act 1965, ss. 218, 372
Companies (Winding-up) Rules 1972, r. 32
Courts of Judicature Act 1964, s. 16
National Language Act 1963/67, s. 8
Rules of the High Court 1980, O. 92 r. 1

For the petitioner - Harry Choe; M/s Ho Loke & Koh
For the respondent - Gunaseelan (R Samynathan with him); M/s Gunaseelan & Assoc

Reported by Suresh Nathan

JUDGMENT

Abdul Wahab Said J:

[1] This winding up petition was filed by the petitioner against the respondent for the amount of RM227,156.15, being rental due under a tenancy agreement. The petitioner has complied with the provisions of r. 32 of the Companies (Winding-up) Rules and a registrar's certificate was duly issued.

[2] The respondent filed an affidavit-in-opposition and both parties had submitted on issues raised in the said affidavit on the day of hearing of the petition. The respondent raised three issues. The first issue was that the petition was invalid as it was not filed in Bahasa Malaysia. The second issue was that the affidavit verifying petition is invalid because it is not clear whether it was affirmed or given under oath. The respondent's learned counsel said that para. (1) of the affidavit verifying petition refers to "made oath" whereas the last paragraph says "affidavit". The third issue is that the s. 218 notice is irregular as it does not give the option to the respondent to compound or secure the said amount in the notice.

[3] In reply to the affidavit-in-opposition the petitioner said that firstly, the petition may be filed in English. Secondly, the affidavit verifying is valid because the deponent had affirmed in English before a Commissioner for Oaths. Thirdly, there is no provision in the Companies Act that requires the petitioner to give any of the options as envisaged, in the s. 218 notice. Fourthly, a consent judgment had been entered in the Kuala Lumpur Sessions Court on 17 June 2004 for RM162,633.34. The respondent had only paid one instalment of RM31,316.67 and thereafter defaulted in payment.

[4] As to whether the petition must be filed in Bahasa Malaysia, counsel for respondent submitted that the petition must be filed in Bahasa Malaysia in compliance with O. 92 r. 1 RHC and s. 8 of the National Language Act 1963/67.

[5] Order 92 r. 1 RHC provides:

> Any document required for use in pursuance of these rules shall be in the national language and may be accompanied by a translation thereof in the English Language;
>
> Provided that any document in the English Language may be used as an exhibit with or without a translation thereof in the national language.

[6] Section 8 National Language Act 1963/67 provides:

> All proceedings (other than the giving of evidence by a witness) in the Federal Court, the Court of Appeal, the High Court or any Subordinate Court shall be in the national language. Provided that the court may either of its own motion or on the application of

A any party to any proceedings and after considering the interests of justice in those proceedings, order that the proceedings (other than the giving of evidence by a witness) shall be partly in the national language and partly in the English Language.

B **[7]** The Companies (Winding-up) Rules 1972 had been made by the Rules Committee in exercise of the powers conferred under s. 372 of the Companies Act and s. 16 of the Courts of Judicature Act 1964.

C **[8]** It must be noted to date there is no authoritative Bahasa Malaysia text of this Winding-up Rules including the forms in relation thereto. It must also be noted that a Registrar's Circular No. 5/1990 dated 28 July 1990 permitted the use of English in winding up proceedings. The circular reads as follows:

D Tarikh: 28 hb Julai 1990

Semua Penolong Kanan Pendaftar,
Semua Pendaftar Mahkamah Rendah,
Semenanjung Malaysia.

E **Pekeliling Pendaftar No. 5 Tahun 1990**

Sebagaimana yang telah dimaklumkan bahawa Pelaksanaan Penggunaan Bahasa Malaysia di Mahkamah telah berkuatkuasa mulai dari 1hb Jun 1990. Sehubungan dengan itu satu Arahan Amalan Hakim besar Malaya No. 2 Tahun 1990 telah
F dikeluarkan.

2. Sebagai garis panduan lanjut, YAA Hakim Besar Malaya telah mengarahkan bahawa mana-mana petisyen berkaitan dengan Perceraian dan Prosiding Hal-Ehwal Suami Isteri, Kebankrapan dan Penggulungan Syarikat, dibenar difailkan dalam Bahasa
G Inggeris sehingga kaedah-kaedah berkenaan dengannya selesai diterjemah dan diwartakan.

3. Arahan ini berkuatkuasa dengan serta merta sehingga diberitahu kelak.

H Sekian.

t.t.
(MOHD. GHAZALI BIN MOHD. YUSOFF)
Ketua Pendaftar,
Mahkamah Agung.

I

[9] It is thus clearly permissible for the petition to be filed in English until such time the authoritative Bahasa Malaysia version is gazetted.

[10] The second issue relates to the affidavit verifying the petition. The first paragraph of the affidavit reads that the deponent "made oath" and at the end of the affidavit it says "affirmed" by the above said Yee Lai Ling.

[11] In *Ahmani Sdn Bhd v. Abu Karim bin Baharom & 3 Others* [2000] 2 CLJ 625, the court referred to the meaning of 'oath' as defined in the *Concise Oxford Dictionary* (5th edn) to mean a solemn appeal to God or revered or dreaded person or object in witness that the statement is true while an affirmation is defined in the same dictionary to mean a solemn declaration by a person who conscientiously declines to take an oath.

[12] I do not think that the respondent's argument that it is not clear whether the affidavit was affirmed or was given under oath bears any weight. I am never in the slightest doubt that the deponent has affirmed in English before a Commissioner for Oaths and that is what really matters. The words 'made oath' in the affidavit do not render it defective or irregular. It would appear to be a direct translation of the Bahasa Malaysia version of "bersumpah dan menyatakan" to English as "made oath and say". It does not detract in any way in respect of the form in which it was administered to invalidate it.

[13] On the third issue, I am in agreement with the petitioner's submission. No where in the Companies Act or in the Winding Up Rules require a creditor who issues a s. 218 notice to give option to debtor to compound or secure the amount unlike in bankruptcy notices.

[14] I observe that the respondent had not raised any substantial issues in its affidavit-in-opposition. The debt was not disputed. Nothing was said as to whether or not the respondent was solvent. The issues raised by the respondent are without basis or trivial. The respondent has not shown any reason why it should not be wound up. In the circumstances I granted the petition to wind up the respondent.